

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

EDWARD D. BLAND, JR.,) CASE NO. C06-0980-TSZ
)
Plaintiff,)
)
v.) REPORT AND RECOMMENDATION
)
SNOHOMISH COUNTY, et al.,)
)
Defendants.)
)

INTRODUCTION AND SUMMARY CONCLUSION

This is a civil rights action brought under 42 U.S.C. § 1983. Plaintiff alleges in his amended complaint that two corrections officers at the Snohomish County Jail employed excessive and unnecessary force against him in April 2006, causing him physical injury. Plaintiff identifies as defendants in his amended complaint the County of Snohomish, Officer Larkin, Officer Burns, and a number of “Doe” defendants who have never been identified. Plaintiff seeks monetary damages. Defendant Snohomish County and defendant Larkin now move for summary judgment.

¹ The record reflects that the service packet mailed to Officer Burns was returned to the Court. (See Dkt. No. 12.) Defendants' motion papers indicate that Snohomish County

01 Plaintiff has not been served with defendants' motion papers because the motion papers
02 mailed to plaintiff were returned.² Plaintiff therefore has not had an opportunity to respond to
03 defendants' motion. This missed opportunity appears to be a result of plaintiff's own failure to
04 comply with the rules of this Court which require a party proceeding pro se to keep the Court and
05 opposing parties advised as to his current address. *See Local Rule CR 41(b).* Accordingly, this
06 Court will proceed to disposition of defendants' summary judgment motion.

07 This Court, having reviewed defendants' motion, and the balance of the record, concludes
08 that defendants' motion for summary judgment should be granted to the extent it seeks dismissal
09 of plaintiff's amended complaint based upon plaintiff's failure to exhaust his administrative
10 remedies.

11 DISCUSSION

12 Defendants argue in their motion for summary judgment that this action should be
13 dismissed because plaintiff failed to exhaust his administrative remedies under 42 U.S.C. §
14 1997e(a). Section 1997e(a) provides that “[n]o action shall be brought with respect to prison
15 conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any
16 jail, prison, or other correctional facility until such administrative remedies as are available are
17

18 Corrections does not employ an “Officer Burns,” and has not employed an “Officer Burns” in the
19 past five years. (*See Dkt. No. 21 at 2.*) As the defendant identified by plaintiff as “Officer Burns”
20 has never been served in this action, and apparently does not even exist, all claims against this
defendant are properly dismissed.

21 ² Defendants represent to the Court in their motion papers that they attempted to serve
22 their motion papers on plaintiff by mailing them to him at the address of record with this Court,
but the documents were returned with a notation indicating that plaintiff had moved and that the
Postal Service was unable to forward the mail. (*See Dkt. No. 25.*)

¹exhausted.” 42 U.S.C. § 1997e(a).

Section 1997e(a) requires *complete* exhaustion through any available process. *See Porter v. Nussle* 534 U.S. 516, 524 (2002) (“All ‘available’ remedies must now be exhausted.”); *Booth v. Churner*, 532 U.S. 731, 735 (2001). Section 1997e(a) also requires *proper* exhaustion. *Woodford v. Ngo*, 126 S. Ct. 2378, 2387 (2006). “Proper” exhaustion means full compliance by a prisoner with all procedural requirements of an institution’s grievance process. *See id.* at 2387-88. If administrative remedies have not been exhausted at the time an action is brought, it must be dismissed without prejudice. *See McKinney v. Carey*, 311 F.3d 1198, 1199 (9th Cir. 2002)(per curiam).

Defendants assert that Snohomish County Corrections has an established administrative grievance process, but that plaintiff failed to utilize that process. Defendants have offered the declaration of David Oster, the Classification Supervisor for Snohomish County Corrections, to support this assertion. (*See* Dkt. No. 23.) In his declaration, Mr. Oster briefly describes the grievance process and identifies the types of issues which are grievable through that process. (*Id.*) Mr. Oster also indicates that plaintiff never submitted a single grievance related to the claims asserted in his amended complaint.

As the record indicates that there was an institutional grievance process available to plaintiff during the course of his incarceration at the Snohomish County Jail, and that plaintiff failed to make use of that process, this Court must conclude that plaintiff failed to properly exhaust the claims asserted in his amended complaint.

CONCLUSION

Based on the foregoing, this Court recommends that defendants' motion for summary

01 judgment be granted to the extent it seeks dismissal of plaintiff's amended complaint based upon
02 plaintiff's failure to exhaust his administrative remedies. This Court further recommends that
03 plaintiff's amended complaint, and this action, be dismissed without prejudice. A proposed order
04 accompanies this Report and Recommendation.

05 DATED this 13th day of July, 2007.

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08 Mary Alice Theiler
09 United States Magistrate Judge
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